CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 35 NOVEMBER 14, 2001 NO. 46

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 01–78)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE:
OCTOBER 1, 2001 THROUGH DECEMBER 31, 2001

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	$0.492300
Brazil	Real	0.372162
Canada	Dollar	0.633152
China, P.R.	Yuan	0.120820
Denmark	Krone	0.123227
Hong Kong	Dollar	0.128218
India	Rupee	0.020820
Japan	Yen	0.008315
Malaysia	Ringgit	0.263158
Mexico	New Peso	0.105097
New Zealand	Dollar	0.406800
Norway	Krone	0.113322
Singapore	Dollar	0.565163
South Africa	Rand	0.110301
Sri Lanka	Rupee	0.011090
Sweden	Krona	0.094156
Switzerland	Franc	0.617436
Thailand	Baht	0.022427
United Kingdom	Pound Sterling	1.478500
Venezuela	Bolivar	0.001345

Dated: November 2, 2001.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(T.D. 01–79)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR OCTOBER 2001

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): October 8, 2001.

Austria schilling:

October 1, 2001	$0.066561
October 2, 2001	.066488
October 3, 2001	.066721
October 4, 2001	.066430
October 5, 2001	.066626
October 6, 2001	.066626
October 7, 2001	.066626
October 8, 2001	.066626
October 9, 2001	.066496
October 10, 2001	.066263
October 11, 2001	.065464
October 12, 2001	.065972
October 13, 2001	.065972
October 14, 2001	.065972
October 15, 2001	.065965
October 16, 2001	.066089
October 17, 2001	.065878
October 18, 2001	.065587
October 19, 2001	.065311
October 20, 2001	.065311
October 21, 2001	.065311
October 22, 2001	.064722
October 23, 2001	.064628
October 24, 2001	.064861
October 25, 2001	.065151
October 26, 2001	.064831
October 27, 2001	.064831
October 28, 2001	.064831
October 29, 2001	.065674
October 30, 2001	.065842
October 31, 2001	.065355

Belgium franc:

October 1, 2001	$0.022705
October 2, 2001	.022680
October 3, 2001	.022759
October 4, 2001	.022660
October 5, 2001	.022727
October 6, 2001	.022727
October 7, 2001	.022727
October 8, 2001	.022727
October 9, 2001	.022682

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for October 2001 (continued)

Belgium franc (continued):

October 10, 2001	$0.022603
October 11, 2001	.022330
October 12, 2001	.022504
October 13, 2001	.022504
October 14, 2001	.022504
October 15, 2001	.022501
October 16, 2001	.022543
October 17, 2001	.022472
October 18, 2001	.022372
October 19, 2001	.022278
October 20, 2001	.022278
October 21, 2001	.022278
October 22, 2001	.022077
October 23, 2001	.022045
October 24, 2001	.022124
October 25, 2001	.022224
October 26, 2001	.022115
October 27, 2001	.022115
October 28, 2001	.022115
October 29, 2001	.022402
October 30, 2001	.022459
October 31, 2001	.022293

Finland markka:

October 1, 2001	$0.154043
October 2, 2001	.153875
October 3, 2001	.154413
October 4, 2001	.153741
October 5, 2001	.154195
October 6, 2001	.154195
October 7, 2001	.154195
October 8, 2001	.154195
October 9, 2001	.153892
October 10, 2001	.153354
October 11, 2001	.151504
October 12, 2001	.152681
October 13, 2001	.152681
October 14, 2001	.152681
October 15, 2001	.152664
October 16, 2001	.152950
October 17, 2001	.152462
October 18, 2001	.151790
October 19, 2001	.151150
October 20, 2001	.151150
October 21, 2001	.151150
October 22, 2001	.159788
October 23, 2001	.159570
October 24, 2001	.150108
October 25, 2001	.150780
October 26, 2001	.150040
October 27, 2001	.150040
October 28, 2001	.150040
October 29, 2001	.151991
October 30, 2001	.152378
October 31, 2001	.151251

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for October 2001 (continued)

France franc:

October 1, 2001	$0.139628
October 2, 2001	.139476
October 3, 2001	.139963
October 4, 2001	.139354
October 5, 2001	.139765
October 6, 2001	.139765
October 7, 2001	.139765
October 8, 2001	.139765
October 9, 2001	.139491
October 10, 2001	.139003
October 11, 2001	.137326
October 12, 2001	.138393
October 13, 2001	.138393
October 14, 2001	.138393
October 15, 2001	.138378
October 16, 2001	.138637
October 17, 2001	.138195
October 18, 2001	.137585
October 19, 2001	.137006
October 20, 2001	.137006
October 21, 2001	.137006
October 22, 2001	.135771
October 23, 2001	.135573
October 24, 2001	.136061
October 25, 2001	.136671
October 26, 2001	.136000
October 27, 2001	.136000
October 28, 2001	.136000
October 29, 2001	.137768
October 30, 2001	.138119
October 31, 2001	.137097

Germany deutsche mark:

October 1, 2001	$0.468292
October 2, 2001	.467781
October 3, 2001	.469417
October 4, 2001	.467372
October 5, 2001	.468752
October 6, 2001	.468752
October 7, 2001	.468752
October 8, 2001	.468752
October 9, 2001	.467832
October 10, 2001	.466196
October 11, 2001	.460572
October 12, 2001	.464151
October 13, 2001	.464151
October 14, 2001	.464151
October 15, 2001	.464100
October 16, 2001	.464969
October 17, 2001	.463486
October 18, 2001	.461441
October 19, 2001	.459498
October 20, 2001	.459498
October 21, 2001	.459498
October 22, 2001	.455357
October 23, 2001	.454692

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for October 2001 (continued)

Germany deutsche mark (continued):	
October 24, 2001	$0.456328
October 25, 2001	.458373
October 26, 2001	.456123
October 27, 2001	.456123
October 28, 2001	.456123
October 29, 2001	.462054
October 30, 2001	.463230
October 31, 2001	.459805
Greece drachma:	
October 1, 2001	$0.002688
October 2, 2001	.002685
October 3, 2001	.002694
October 4, 2001	.002683
October 5, 2001	.002691
October 6, 2001	.002691
October 7, 2001	.002691
October 8, 2001	.002691
October 9, 2001	.002685
October 10, 2001	.002676
October 11, 2001	.002644
October 12, 2001	.002664
October 13, 2001	.002664
October 14, 2001	.002664
October 15, 2001	.002664
October 16, 2001	.002669
October 17, 2001	.002660
October 18, 2001	.002649
October 19, 2001	.002637
October 20, 2001	.002637
October 21, 2001	.002637
October 22, 2001	.002614
October 23, 2001	.002610
October 24, 2001	.002619
October 25, 2001	.002631
October 26, 2001	.002618
October 27, 2001	.002618
October 28, 2001	.002618
October 29, 2001	.002652
October 30, 2001	.002659
October 31, 2001	.002639
Ireland pound:	
October 1, 2001	$1.162953
October 2, 2001	1.161683
October 3, 2001	1.165747
October 4, 2001	1.160668
October 5, 2001	1.164096
October 6, 2001	1.164096
October 7, 2001	1.164096
October 8, 2001	1.164096
October 9, 2001	1.161810
October 10, 2001	1.157747
October 11, 2001	1.143780
October 12, 2001	1.152668
October 13, 2001	1.152668

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for October 2001 (continued)

Ireland pound (continued):	
October 14, 2001	$1.152668
October 15, 2001	1.152541
October 16, 2001	1.154700
October 17, 2001	1.151018
October 18, 2001	1.145939
October 19, 2001	1.141114
October 20, 2001	1.141114
October 21, 2001	1.141114
October 22, 2001	1.130829
October 23, 2001	1.129178
October 24, 2001	1.133241
October 25, 2001	1.138320
October 26, 2001	1.132733
October 27, 2001	1.132733
October 28, 2001	1.132733
October 29, 2001	1.147462
October 30, 2001	1.150383
October 31, 2001	1.141875
Italy lira:	
October 1, 2001	$0.000473
October 2, 2001	.000473
October 3, 2001	.000474
October 4, 2001	.000472
October 5, 2001	.000473
October 6, 2001	.000473
October 7, 2001	.000473
October 8, 2001	.000473
October 9, 2001	.000473
October 10, 2001	.000471
October 11, 2001	.000465
October 12, 2001	.000469
October 13, 2001	.000469
October 14, 2001	.000469
October 15, 2001	.000469
October 16, 2001	.000470
October 17, 2001	.000468
October 18, 2001	.000466
October 19, 2001	.000464
October 20, 2001	.000464
October 21, 2001	.000464
October 22, 2001	.000460
October 23, 2001	.000459
October 24, 2001	.000461
October 25, 2001	.000463
October 26, 2001	.000461
October 27, 2001	.000461
October 28, 2001	.000461
October 29, 2001	.000467
October 30, 2001	.000468
October 31, 2001	.000464
Luxembourg franc:	
October 1, 2001	$0.022705
October 2, 2001	.022680
October 3, 2001	.022759

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for October 2001 (continued)

Luxembourg franc (continued):	
October 4, 2001	$0.022660
October 5, 2001	.022727
October 6, 2001	.022727
October 7, 2001	.022727
October 8, 2001	.022727
October 9, 2001	.022682
October 10, 2001	.022603
October 11, 2001	.022330
October 12, 2001	.022504
October 13, 2001	.022504
October 14, 2001	.022504
October 15, 2001	.022501
October 16, 2001	.022543
October 17, 2001	.022472
October 18, 2001	.022372
October 19, 2001	.022278
October 20, 2001	.022278
October 21, 2001	.022278
October 22, 2001	.022077
October 23, 2001	.022045
October 24, 2001	.022124
October 25, 2001	.022224
October 26, 2001	.022115
October 27, 2001	.022115
October 28, 2001	.022115
October 29, 2001	.022402
October 30, 2001	.022459
October 31, 2001	.022293
Netherlands guilder:	
October 1, 2001	$0.415617
October 2, 2001	.415164
October 3, 2001	.416616
October 4, 2001	.414800
October 5, 2001	.416026
October 6, 2001	.416026
October 7, 2001	.416026
October 8, 2001	.416026
October 9, 2001	.415209
October 10, 2001	.413757
October 11, 2001	.408765
October 12, 2001	.411942
October 13, 2001	.411942
October 14, 2001	.411942
October 15, 2001	.411896
October 16, 2001	.412668
October 17, 2001	.411352
October 18, 2001	.409537
October 19, 2001	.407812
October 20, 2001	.407812
October 21, 2001	.407812
October 22, 2001	.404137
October 23, 2001	.403547
October 24, 2001	.404999
October 25, 2001	.406814
October 26, 2001	.404817

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for October 2001 (continued)

Netherlands guilder (continued):

October 27, 2001	$0.404817
October 28, 2001	.404817
October 29, 2001	.410081
October 30, 2001	.411125
October 31, 2001	.408085

Portugal escudo:

October 1, 2001	$0.004568
October 2, 2001	.004564
October 3, 2001	.004579
October 4, 2001	.004560
October 5, 2001	.004573
October 6, 2001	.004573
October 7, 2001	.004573
October 8, 2001	.004573
October 9, 2001	.004564
October 10, 2001	.004548
October 11, 2001	.004493
October 12, 2001	.004528
October 13, 2001	.004528
October 14, 2001	.004528
October 15, 2001	.004528
October 16, 2001	.004536
October 17, 2001	.004522
October 18, 2001	.004502
October 19, 2001	.004483
October 20, 2001	.004483
October 21, 2001	.004483
October 22, 2001	.004442
October 23, 2001	.004436
October 24, 2001	.004452
October 25, 2001	.004472
October 26, 2001	.004450
October 27, 2001	.004450
October 28, 2001	.004450
October 29, 2001	.004508
October 30, 2001	.004519
October 31, 2001	.004486

South Korea won:

October 1, 2001	$0.000765
October 2, 2001	.000764
October 3, 2001	.000764
October 4, 2001	.000762
October 5, 2001	.000762
October 6, 2001	.000762
October 7, 2001	.000762
October 8, 2001	.000762
October 9, 2001	.000765
October 10, 2001	.000765
October 11, 2001	.000768
October 12, 2001	.000770
October 13, 2001	.000770
October 14, 2001	.000770
October 15, 2001	.000770
October 16, 2001	.000769

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for October 2001 (continued)

South Korea won (continued):

October 17, 2001	$0.000769
October 18, 2001	.000769
October 19, 2001	.000768
October 20, 2001	.000768
October 21, 2001	.000768
October 22, 2001	.000767
October 23, 2001	.000767
October 24, 2001	.000772
October 25, 2001	.000772
October 26, 2001	.000771
October 27, 2001	.000771
October 28, 2001	.000771
October 29, 2001	.000773
October 30, 2001	.000770
October 31, 2001	.000772

Spain peseta:

October 1, 2001	$0.005505
October 2, 2001	.005499
October 3, 2001	.005518
October 4, 2001	.005494
October 5, 2001	.005510
October 6, 2001	.005510
October 7, 2001	.005510
October 8, 2001	.005510
October 9, 2001	.005499
October 10, 2001	.005480
October 11, 2001	.005414
October 12, 2001	.005456
October 13, 2001	.005456
October 14, 2001	.005456
October 15, 2001	.005455
October 16, 2001	.005466
October 17, 2001	.005448
October 18, 2001	.005424
October 19, 2001	.005401
October 20, 2001	.005401
October 21, 2001	.005401
October 22, 2001	.005353
October 23, 2001	.005345
October 24, 2001	.005364
October 25, 2001	.005388
October 26, 2001	.005362
October 27, 2001	.005362
October 28, 2001	.005362
October 29, 2001	.005431
October 30, 2001	.005445
October 31, 2001	.005405

Taiwan N.T. dollar:

October 1, 2001	$0.028902
October 2, 2001	.028885
October 3, 2001	.028893
October 4, 2001	.028893
October 5, 2001	.028902
October 6, 2001	.028902

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for October 2001 (continued)

Taiwan N.T. dollar (continued):

October 7, 2001	$0.028902
October 8, 2001	.028902
October 9, 2001	.028902
October 10, 2001	.028902
October 11, 2001	.028902
October 12, 2001	.028960
October 13, 2001	.028960
October 14, 2001	.028960
October 15, 2001	.028918
October 16, 2001	.028918
October 17, 2001	.028918
October 18, 2001	.028918
October 19, 2001	.028918
October 20, 2001	.028918
October 21, 2001	.028918
October 22, 2001	.028918
October 23, 2001	.028918
October 24, 2001	.028918
October 25, 2001	.028910
October 26, 2001	.028927
October 27, 2001	.028927
October 28, 2001	.028927
October 29, 2001	.028944
October 30, 2001	.028944
October 31, 2001	.028944

Dated: November 2, 2001.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(T.D. 01–80)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR OCTOBER 2001

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 01–50 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): October 8, 2001.

None

Dated: November 2, 2001.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

Herbert N. Maletz
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon

Decisions of the United States Court of International Trade

(Slip Op. 01–125)

PEER BEARING CO., PLAINTIFF AND DEFENDANT-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND TIMKEN CO., DEFENDANT-INTERVENOR AND PLAINTIFF, AND L & S BEARING CO. AND SHANGHAI GENERAL BEARING CO., LTD., DEFENDANT-INTERVENORS

Consolidated Court No. 97–03–00419

This consolidated action concerns the claims raised by Peer Bearing Company ("Peer Bearing"), a plaintiff, and The Timken Company ("Timken"), a plaintiff and a defendant-intervenor. Peer Bearing and Timken move pursuant to Rule 56.2 of the Rules of this Court for judgment on the agency record challenging the Department of Commerce, International Trade Administration's ("Commerce") final determination, entitled *Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China*, 62 Fed. Reg. 6189 (Feb. 11, 1997).

Peer Bearing asserts that Commerce erred in: (1) selecting an allegedly punitive dumping margin for certain transactions of Peer Bearing on the basis of best information available ("BIA") to Commerce; (2) failing to issue a separate rate determination for East Sea Bearing Company Ltd. ("East Sea Bearing"); and (3) committing a clerical error in applying BIA to certain models for which factors of production ("FOPs") were available.

Timken claims that Commerce erred in: (1) selecting Indonesian, rather than Indian, import statistics for valuing bearing-quality steel used to manufacture tapered roller bearings ("TRBs") cups and cones; (2) failing to adjust overhead, selling, general and administrative expenses ("SG&A") and profit rates to account for differences in material and labor values of other surrogate sources used in determining foreign market value ("FMV"); (3) failing to use Indian material and labor costs data in the calculation of overhead, SG&A and profit rates; (4) adjusting FMV by the exporter's sales price ("ESP"); (5) failing to adjust United States price for marine insurance costs based on value rather than weight; and (6) revoking the antidumping duty order with respect to Shanghai General Bearing Co., Ltd. ("Shanghai General"), a defendant-intervenor in this action.

Held: Peer Bearing's motion for judgment on the agency record is granted in part and denied in part. Timken's motion for judgment on the agency record is granted in part and denied in part. Case is remanded to Commerce to: (1) correct the clerical error resulting from the application of BIA to certain models for which FOPs were available; (2) redetermine direct labor costs on the basis of SKF India's data on labor (supplemented by facts otherwise available only to the extent necessitated by the insufficiency, if any, of SKF India's data currently on the record); and (3) determine marine insurance in a manner related to the value and the risk of transporting TRBs. Commerce's final determination is affirmed in all other respects.

[Peer Bearing's motion for judgment on the agency record is granted in part and denied in part. Timken's motion for judgment on the agency record is granted in part and denied in part. Case remanded.]

(Dated October 25, 2001)

Arent Fox Kintner Plotkin & Kahn, PLLC (John M. Gurley, Peter L. Sultan, Jinhee K. Wilde and *Matthew J. McConkey)* for Peer Bearing Company, plaintiff.

Robert D. McCallum, Jr., Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Henry R. Felix)*; of counsel: *Rina Goldenberg*, Office of the Chief Counsel for Import Administration, United States Department of Commerce, for defendant.

Stewart and Stewart (Terence P. Stewart, James R. Cannon, Jr., Amy S. Dwyer and *Charles A. St. Charles)* for The Timken Company, plaintiff and defendant-intervenor.

Cohen Darnell & Cohen, P.L.L.C. (Mark A. Cohen) for L & S Bearing Company, defendant-intervenor.[1]

Reed Smith Shaw & McClay (James K. Kearney) for Shanghai General Bearing Co., Ltd., defendant-intervenor.

OPINION

Tsoucalas, *Senior Judge:* This consolidated action concerns the claims raised by Peer Bearing Company ("Peer Bearing"), a plaintiff, and The Timken Company ("Timken"), a plaintiff and a defendant-intervenor. Peer Bearing and Timken move pursuant to Rule 56.2 of the Rules of this Court for judgment on the agency record challenging the Department of Commerce, International Trade Administration's ("Commerce") final determination, entitled *Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China*, 62 Fed. Reg. 6189 (Feb. 11, 1997).

Peer Bearing asserts that Commerce erred in: (1) selecting an allegedly punitive dumping margin for certain transactions of Peer Bearing on the basis of best information available ("BIA") to Commerce; (2) failing to issue a separate rate determination for East Sea Bearing Company Ltd. ("East Sea Bearing"); and (3) committing a clerical error in applying BIA to certain models for which factors of production ("FOPs") were available.

Timken claims that Commerce erred in: (1) selecting Indonesian, rather than Indian, import statistics for valuing bearing-quality steel used to manufacture tapered roller bearings ("TRBs") cups and cones; (2) failing to adjust overhead, selling, general and administrative expenses ("SG&A") and profit rates to account for differences in material and labor values of other surrogate sources used in determining foreign market value ("FMV"); (3) failing to use Indian material and labor costs data in the calculation of overhead, SG&A and profit rates; (4) adjusting FMV by the exporter's sales price ("ESP"); (5) failing to adjust United States price for marine insurance costs based on value rather than weight; and (6) revoking the antidumping duty order with respect to Shanghai General Bearing Co., Ltd. ("Shanghai General"), a defendant-intervenor in this action.

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[1] L & S Bearing Company has intervened in this action but did not file a motion for judgment upon the agency record and supporting brief.

BACKGROUND

The administrative review at issue covers the period of review from June 1, 1993, through May 31, 1994.[2] Commerce published the preliminary results of the subject review on September 26, 1995. *See Preliminary Results of Antidumping Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China ("Preliminary Results")*, 60 Fed. Reg. 49,572. On Feb. 11, 1997, Commerce published the *Final Results* at issue. *See* 62 Fed. Reg. 6189.

JURISDICTION

The Court has jurisdiction over this matter pursuant to 19 U.S.C. § 1516a(a) (1994) and 28 U.S.C. § 1581(c) (1994).

STANDARD OF REVIEW

In reviewing a challenge to Commerce's final determination in an antidumping administrative review, the Court will uphold Commerce's determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law * * *." 19 U.S.C. § 1516a(b)(1)(B)(i) (1994).

I. Substantial Evidence Test

Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Substantial evidence "is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966) (citations omitted). Moreover, "[t]he court may not substitute its judgment for that of the [agency] when the choice is 'between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*.'" *American Spring Wire Corp. v. United States*, 8 CIT 20, 22, 590 F. Supp. 1273, 1276 (1984) (quoting *Penntech Papers, Inc. v. NLRB*, 706 F.2d 18, 22–23 (1st Cir. 1983) (quoting, in turn, *Universal Camera*, 340 U.S. at 487–88)).

II. Chevron Two-Step Analysis

To determine whether Commerce's interpretation and application of the antidumping statute is "in accordance with law," the Court must undertake the two-step analysis prescribed by *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc. ("Chevron")*, 467 U.S. 837 (1984). Under the first step, the Court reviews Commerce's construction of a statutory provision to determine whether "Congress has directly spo-

[2] Since the administrative review at issue was initiated before January 1, 1995, the applicable law is the antidumping statute as it existed prior to the amendments made by the Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994). *See Torrington Co. v. United States*, 68 F.3d 1347, 1352 (Fed. Cir. 1995).

ken to the precise question at issue." *Id.* at 842. "To ascertain whether Congress had an intention on the precise question at issue, [the Court] employ[s] the 'traditional tools of statutory construction.'" *Timex V.I., Inc. v. United States*, 157 F.3d 879, 882 (Fed. Cir. 1998) (citing *Chevron*, 467 U.S. at 843 n.9). "The first and foremost 'tool' to be used is the statute's text, giving it its plain meaning. Because a statute's text is Congress's final expression of its intent, if the text answers the question, that is the end of the matter." *Id.* (citations omitted). Beyond the statute's text, the tools of statutory construction "include the statute's structure, canons of statutory construction, and legislative history." *Id.* (citations omitted); *but see Floral Trade Council v. United States*, 23 CIT ____, ____ n.6, 41 F. Supp. 2d 319, 323 n.6 (1999) (noting that "[n]ot all rules of statutory construction rise to the level of a canon, however") (citation omitted).

If, after employing the first prong of *Chevron*, the Court determines that the statute is silent or ambiguous with respect to the specific issue, the question for the Court becomes whether Commerce's construction of the statute is permissible. *See Chevron*, 467 U.S. at 843. Essentially, this is an inquiry into the reasonableness of Commerce's interpretation. *See Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034, 1038 (Fed. Cir. 1996). Provided Commerce has acted rationally, the Court may not substitute its judgment for the agency's. *See Koyo Seiko Co. v. United States*, 36 F.3d 1565, 1570 (Fed. Cir. 1994) (holding that "a court must defer to an agency's reasonable interpretation of a statute even if the court might have preferred another"); *see also IPSCO, Inc. v. United States*, 965 F.2d 1056, 1061 (Fed. Cir. 1992). The "[C]ourt will sustain the determination if it is reasonable and supported by the record as a whole, including whatever fairly detracts from the substantiality of the evidence." *Negev Phosphates, Ltd. v. United States Dep't of Commerce*, 12 CIT 1074, 1077, 699 F. Supp. 938, 942 (1988) (citations omitted). In determining whether Commerce's interpretation is reasonable, the Court considers the following non-exclusive list of factors: the express terms of the provisions at issue, the objectives of those provisions and the objectives of the antidumping scheme as a whole. *See Mitsubishi Heavy Indus. v. United States*, 22 CIT ____, ____, 15 F. Supp. 2d 807, 813 (1998).

DISCUSSION

I. Commerce's Use of Best Information Available

A. Background

During the period of review, Peer Bearing, through Chin Jun Industrial Ltd. ("Chin Jun"), a reseller of TRBs and an affiliate of Peer Bearing, made purchases of the merchandise at issue from various exporters from the People's Republic of China ("PRC"). *See* Pl.'s Mem. P. & A. Supp. Pl.'s Rule 56.2 Mot. J. Agency R. ("Peer Bearing's Mem.") at 2. Peer Bearing, in turn, resold the merchandise in the United States and in third-country markets. *See id.*

Because the PRC is a nonmarket economy, Commerce, acting under the mandate of 19 U.S.C. § 1677b(c) (1988), calculated FMV on the basis of FOPs data. *See id.* at 3. Commerce sought and obtained FOPs data for some but not all of the exporters utilized by Chin Jun. *See id.* Consequently, Commerce applied BIA to the United States sales of the merchandise on which FOPs data was unavailable. *See id.* BIA was based on the higher of: (1) the highest of the rates found for Peer Bearing in the less than fair value ("LTFV") investigations in the prior reviews; or (2) the highest margin calculated for any respondent in the review at issue. *See Final Results*, 62 Fed. Reg. at 6214. Applying this methodology, Commerce determined the dumping margin for the merchandise on which FOPs data was unavailable, the rate equal to the rate determined for another respondent in the review. *See id.*

B. Contentions of the Parties

Peer Bearing contends that Commerce's reliance on BIA was improper because the missing data was beyond the control of Peer Bearing. *See* Peer Bearing's Mem. at 5–6 (citing *Usinor Sacilor v. United States*, 18 CIT 1155, 1162, 872 F. Supp. 1000, 1007 (1994)). Additionally, Peer Bearing argues that Commerce erred in using BIA that was "punitive" and ignoring: (1) Peer Bearing's cooperation with Commerce's investigative measures, *see id.* at 4, 7 (citing *Final Results*, 62 Fed. Reg. at 6210–11); and (2) the fact that the missing data constituted but a minor gap in the record Commerce compiled. *See* Pl.'s Reply Resp. Brs. Def. and Def.-Intervenor ("Peer Bearing's Reply") at 2–4.

Commerce asserts that the language of 19 U.S.C. § 1677e(c) allows Commerce to rely on BIA in a situation as the one in the case at bar. *See* Def.'s Mem. Opp'n Pls.' Mots. J. Agency R. ("Def.'s Mem.") at 11–12. Commerce also maintains that the BIA used did not amount to "punitive" BIA because: (1) the BIA used was a "partial" BIA, *see id.* at 14–16; and (2) Commerce did not reject "'low margin information in favor of high margin information that was demonstrably less probative of current conditions.'" *Id.* at 16 (quoting *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)).

Timken supports Commerce's position noting that: (1) Commerce's reliance on BIA was consistent with Commerce's practice as scrutinized by courts' interpretations of the relative statutory provision; and (2) Commerce's selection of partial BIA did not amount to a punitive action. *See* Timken's Opp'n Pl.'s Mot. J. Agency R. ("Timken's Opp'n") at 8–15.

C. Analysis

1. Commerce's Reliance on BIA

In conducting an antidumping investigation, Commerce is charged with calculating margins as accurately as possible. *See Rhone Poulenc*, 899 F.2d at 1191. In order to fulfill this mandate, Commerce relies, wherever possible, on the information submitted by the respondents. Conversely, where the necessary information is not obtained from respondents, Commerce resorts to the BIA "whenever a party or *any*

other person refuses or *is unable* to produce information requested in a timely manner and in the form required, *or* otherwise significantly impedes an investigation * * *." 19 U.S.C. § 1677e(c) (1988) (emphasis supplied).

The legislative goal behind Commerce's right to use facts available is to "induce respondents to provide Commerce with requested information in a timely, complete, and accurate manner * * *." *National Steel Corp. v. United States*, 18 CIT 1126, 1129, 870 F. Supp. 1130, 1134 (1994) (citation omitted). If a party, however,

> promptly * * * notifies [Commerce] that such party is unable to submit the information requested in the requested form and manner [and provides Commerce] with a full explanation and suggest[s] alternative forms in which such party is able to submit the information, [Commerce] shall consider the ability of the * * * party to submit the information in the requested form and manner and *may* modify [Commerce's] requirements * * *.

19 U.S.C. § 1677m(c)(1) (1994) (a later codification of Commerce's practice at the time of the review, emphasis supplied).

Consequently, Commerce enjoys very broad, although not unlimited, discretion with regard to the propriety of its use of BIA. *See generally, Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565 (Fed. Cir. 1990) (acknowledging Commerce's broad discretion with regard to the use of facts available but pointing out that Commerce's resort to facts available is an abuse of discretion where the information Commerce requests does not and could not exist).

In addition, a regulation implementing 19 U.S.C. § 1677e(c), 19 C.F.R. § 353.37 (1994), allows Commerce to resort either to total or to partial BIA. *See National Steel*, 18 CIT at 1131, 870 F. Supp. at 1135; *see also Christensen v. Harris County*, 529 U.S. 576, 588 (2000). Commerce applies total BIA when a respondent has failed to submit information or submitted data so flawed that the response as a whole is rendered unreliable.[3] *See Persico Pizzamiglio, S.A. v. United States*, 18 CIT 299, 305 (1994); *Rhone Poulenc, Inc. v. United States*, 13 CIT 218, 224, 710 F. Supp. 341, 346 (1989). Conversely, "Commerce applies partial BIA when only part of the submitted information is deficient." *National Steel*, 18 CIT at 1131, 870 F. Supp. at 1135. "The adversity of the information used as partial BIA depends on the level of sufficiency of the information provided" but not on the respondent's level of cooperation. *Id.*

In this case, Commerce chose to apply partial BIA to Peer Bearing's sales of the merchandise for which the requested information was deficient because the deficiency affected Commerce's ability to make the determination only to a limited extent. *See Final Results*, 62 Fed. Reg. at 6210–11. Commerce's general decision to resort to partial BIA, therefore, was entirely justified under the mandate of the applicable statute and regulation, *see* 19 U.S.C. § 1677m(c)(1); 19 C.F.R. § 353.37, and Peer

[3] "For total BIA, the margins used in determining the overall rate are derived from sources other than the data submitted by the respondent in the final investigation." *National Steel*, 18 CIT at 1131, 870 F. Supp. at 1135.

Bearing's substantial level of cooperation does not render Commerce's decision invalid in view of: (1) the discretion specifically afforded to Commerce by the language of 19 U.S.C. § 1677m(c)(1), particularly, in light of *National Steel*, 18 CIT at 1131, 870 F. Supp. at 1135; and (2) the level of deference this Court owes to an agency determination. *See American Spring Wire*, 8 CIT at 22, 590 F. Supp. at 1276 ("The court may not substitute its judgment for that of the [agency] when the choice is 'between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*,'" quotations omitted).

2. Commerce's Use of Allegedly Punitive BIA

Peer Bearing contests the assignment of the particular BIA rate that Commerce chose. *See* Pl.'s Mem. at 4. Peer Bearing asserts that the particular rate is "punitive," *see id.*, and requests the Court to direct Commerce to assign a "neutral" BIA rate. *See id.* at 9–10.

First, the regulation implemented under the statute provides that Commerce is entitled to resort to BIA if Commerce "(1) [d]oes not receive a complete, accurate, and timely response to [its] request for factual information; or (2) [i]s unable to verify, within the time specified, the accuracy and completeness of the factual information submitted." 19 C.F.R. § 353.37(a). The language of § 353.37(a) is a practical implementation of the statutory mandate that serves as a mechanism preventing the impediments to investigation proscribed by the statute. *See* 19 U.S.C. § 1677e(b) (1988). Thus, Commerce acted fully in accordance with the controlling provisions.

Second, the Court is not convinced that the particular rate chosen by Commerce is a punitive one. "Commerce's use of uncooperative BIA does not necessarily make the resulting rate 'punitive' in nature * * *." *Transcom, Inc. v. United States*, 24 CIT ____, ____, 121 F. Supp. 2d 690, 705 (2000). "In order for the agency's application of the best information rule to be properly characterized as 'punitive,' the agency would have had to reject low margin information in favor of high margin information that was *demonstrably less probative* of current conditions."[4] *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185, 1191 (Fed. Cir. 1993) (citation omitted, emphasis supplied). Peer Bearing's expectations are beside the point. "[T]he expectations of the [United States] importer are irrelevant in setting a dumping margin." *Union Camp Corp. v. United States*, 22 CIT 267, 279 n.7, 8 F. Supp. 2d 842, 852 n.7 (1998).

Therefore, Commerce was free to choose a rate Commerce determined to be appropriate because the proposed low margin information was not "demonstrably [more] probative of current conditions." *Final Results*, 62 Fed. Reg. at 6211.

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[4] Furthermore, the fact that a respondent cooperated during the review period does not, by itself, require Commerce to select a non-adverse or neutral BIA rate. *See Allied-Signal Aerospace Co. v. United States*, 28 F.3d 1188 (Fed. Cir. 1994) (affirming Commerce's selection of 65.13 and 17.31 percent cooperative-respondent rates), *cert. denied*, 513 U.S. 1077 (1995).

II. Separate Rate For East Sea Bearing Company Ltd.

A. Background

East Sea Bearing, a Chinese reseller, purchased TRBs from Chinese manufacturers and then resold that merchandise to Peer Bearing. *See* Peer Bearing's Mem. at 3. In the review at issue, East Sea Bearing was neither named as a respondent nor subject to any request for review of its entries. *See id.* Nonetheless, one week prior to publication of the *Preliminary Results*, East Sea Bearing submitted a voluntary response to Commerce's separate-rates questionnaire.[5] *See* Peer Bearing's Reply at 11.

B. Contentions of the Parties

Peer Bearing contends that Commerce's decision not to issue a separate rate for East Sea Bearing was unsupported by substantial evidence and not in accordance with law. *See* Peer Bearing's Reply at 11–13.

Commerce maintains that it acted reasonably in declining to assign a separate rate to East Sea Bearing. *See* Def.'s Mem. at 18–20. Timken supports the conclusion reached by Commerce and points out that at a later review Commerce assigned a separate rate to East Sea Bearing, thereby making any amendment to the determination at issue obsolete.[6]

C. Analysis

Commerce's antidumping regulations provide that factual information solicited through the means of questionnaires must be submitted by the deadline stated in such questionnaires. *See* 19 C.F.R. § 353.31(b)(2) (1994). Furthermore, "questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire." 19 C.F.R. § 353.31(b)(4) (1994).

Commerce's questionnaires pertinent to the matter were issued between December 5 and 9, 1994, and bore a submission deadline of January 3, 1995. *See* Def.'s Mem. at 18–19. East Sea Bearing's response, submitted on September 18, 1995, was received "much too late for timely consideration by Commerce in the relevant review period.[7] Even if Commerce wanted to be generous with the imposed deadline for such

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[5] In this submission, East Sea Bearing argued that its exports should be liquidated at the entered value because it was not related to any of the other parties in the review. East Sea Bearing then submitted a case brief on November 6, 1995, claiming that: (1) East Sea Bearing should have been treated like Xiangfan International Trade Corporation, a voluntary respondent determined to be entitled to a separate rate; and (2) that East Sea Bearing's entries should have been liquidated at the entered rate. *See* Peer Bearing's Mem. at 4, 10–11; Peer Bearing's Reply at 11–13.

[6] While Timken's argument may have some merit as far as the practical outcome of the issue is concerned, the Court disagrees with Timken's bold assertion that an issue that may constitute a legal wrong necessarily becomes moot merely as a result of a later unrelated action that incidentally, and possibly temporarily, corrects the alleged wrong. *See generally, Weinstein v. Bradford*, 423 U.S. 147 (1975), *compare De Funis v. Odegaard*, 416 U.S. 312 (1974).

[7] Peer Bearing points out that: (1) East Sea Bearing's very first submission was filed on March 30, 1995; and (2) East Sea Bearing cannot be subject to a set deadline because of East Sea Bearing's voluntary status. *See* Peer Bearing's Reply at 12. Additionally, Peer Bearing asserts that "Commerce orally indicated * * * that parties could file a voluntary response to the * * * questionnaire" *any* time before the *Preliminary Results* were issued. *Id.* The arguments leave this Court unconvinced. First, a January deadline renders a submission filed in March as defective as that filed in September. Second, the Court fails to fancy an operable review scheme where any party is allowed to provide an agency with information at the party's leisure and yet can expect the agency to review the information timely and issue a binding determination. Finally, a mere allegation of one party about oral assurances made by an agency creates no obligation for the agency to follow a particular mode of action, it serves even less as a basis for a legal remedy or a court review. *Compare United States v. Mead Corp.*, 121 S. Ct. 2164 (2001).

responses, Commerce regulations allow for no more than 60 days to respond." *Id.* at 19. Consequently, Commerce was correct in declining to consider East Sea Bearing's submission. Under the governing regulatory regime, the mere fact that Commerce assigned a separate rate to another volunteer respondent, Xiangfan International Trade Corporation, that entered its response within the allotted time period, does not obligate Commerce to assign a separate antidumping rate to East Sea Bearing.

III. Commerce's Ministerial Error

In the *Preliminary Results*, Commerce applied BIA to several models of Peer Bearing's merchandise on the assumption that FOPs data had not been provided for these models, when, in fact, it had been provided. *See* 60 Fed. Reg. 49,572. Being alerted to the issue by Peer Bearing, in the *Final Results* Commerce agreed to correct these clerical errors. *See* 62 Fed. Reg. at 6211. Yet, Commerce's calculations in the *Final Results* failed to reflect the corrections. *See id.* Commerce seeks to have the case remanded for corrections and Peer Bearing concurs with Commerce's position. Therefore, the issue is remanded to Commerce to adjust the calculations accordingly.

IV. Commerce's Selection of Indonesian Import Statistics as a Surrogate Value For Raw-Material Costs of Steel Used By Chinese Producers

A. Background

Antidumping margins are the difference between FMV and United States price of the merchandise. When the merchandise is produced in a nonmarket economy country ("NME"), such as the PRC, Commerce constructs FMV pursuant to § 1677b(c), which provides that

> the valuation of the factors of production shall be based on *the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by [Commerce].*

19 U.S.C. § 1677b(c)(1) (1988) (emphasis supplied).

The statute does not define the phrase "best available information," it only provides that

> [Commerce], in valuing factors of production[,] * * * shall utilize, to the extent possible, the prices or costs of factors of production in *one or more market economy countries* that are[:] (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.

19 U.S.C. § 1677b(c)(4) (1988) (emphasis supplied).

Thus, the statute grants Commerce broad discretion to determine the "best available information" in a reasonable manner on a case-by-case basis. *See Lasko Metal Prods., Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994) (noting that the statute "simply does not say—anywhere—that the factors of production must be ascertained in a single fashion.") Consequently, Commerce values as many FOPs as possible

using information obtained from the "primary" surrogate country, that is, the country that Commerce considers to be most comparable in economic terms to the NME country being investigated, and that also produces merchandise comparable to the subject merchandise. *See, e.g., Tianjin Mach. Import & Export Corp. v. United States ("Tianjin")*, 16 CIT 931, 940–41, 806 F. Supp. 1008, 1017–18 (1992); *Timken Co. v. United States*, 16 CIT 142, 143–44, 788 F. Supp. 1216, 1218 (1992). Additionally, if Commerce determines that suitable values cannot be obtained from the data of the primary surrogate country, Commerce resorts to the data from the second, and sometimes the third, surrogate. *See, e.g., Timken Co. v. United States*, 2001 Ct. Intl. Trade LEXIS 100 at *30–38, Slip Op. 01–96 at 24–30 (CIT Aug. 9, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 Fed. Reg. 55,625, 55,629 (Nov. 8, 1994); *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China ("Helical Spring Lock Washers")*, 58 Fed. Reg. 48,833, 48,835 (Sept. 20, 1993).

During this review, Commerce initially chose India as the primary surrogate country to value all FOPs, *see Preliminary Results*, 60 Fed. Reg. at 49,574, because Commerce believed Indian import statistics constituted the best information available for valuing the merchandise at issue. *See id.* at 49,575. After considering comments that questioned the use of Indian import statistics, Commerce re-examined the matter. *See Final Results*, 62 Fed. Reg. at 6195.

Upon examining the Indian import statistics, Commerce found that bearing-quality steel used to manufacture the merchandise at issue was most likely contained in category 7228.30 comprised of several eight-digit sub-categories. *See id.* After elimination of those specific eight-digit sub-categories that did not cover the steel used to produce the merchandise at issue, Commerce was left to consider the only remaining sub-category, 7228.30.19, designated as "other" type of steel. *See id.* Commerce, however, had no information concerning this "other" type of steel and whether this category specifically isolated the steel used to produce the merchandise at issue. *See id.*

Examining the data further, Commerce observed that the average value of steel in this "other" type of steel sub-category was greater than the average value of steel in category 7228.30. In addition, Commerce compared the average value of general category 7228.30 to pertinent import data regarding the United States and found that, during the period of review, the average value of steel included in Indian category 7228.30 was significantly higher than the average value of the analogous steel imported into the United States. *See id.* Consequently, Commerce: (1) determined that the Indian import data that it used in the *Preliminary Results*, 60 Fed. Reg. at 49,574, were not reliable, *see Final Results*, 62 Fed. Reg. at 6195–96; and (2) concluded that the import data from a secondary surrogate, Indonesia, a producer of merchandise comparable to

that at issue, would constitute the best information available to value steel used to produce the merchandise at issue. *See id.* at 6196. Commerce stated that

> unlike the Indian data, the Indonesian six-digit category 7228.30 closely approximates the value of [United States] imports of [steel of analogous quality] * * *. Thus, [Commerce] * * * determined that Indonesian category 7228.30, which is the narrowest category [Commerce] can determine [that] would contain [steel of analogous quality], is the best available information for valuing steel used to produce [the merchandise at issue,] [a]lthough Indonesia is not the first-choice surrogate country in this review * * *.

Id.

B. Contentions of the Parties

Timken, acting in its capacity as plaintiff, asserts that: (1) Commerce's refusal to use Indian data was unjustified, *see* Timken's Mem. P. & A. Supp. Mot. J. Agency R. ("Timken's Mem.") at 17–31; (2) Commerce's reliance on Indonesian data and the United States benchmark was unreasonable, *see id.* at 20–26; and (3) Commerce's decision to use Indonesian data for the first time in the *Final Results* after indicating in the *Preliminary Results* that Indian data would be used constituted an unjustified change in methodology and deprived Timken of the opportunity to comment on the change and to provide supplemental information.[8] *See id.* at 29.

Commerce maintains that its determination and the underlying analyses were reasonable, in accord with the mandate of 19 U.S.C. § 1677b(c) (1988) and the level of discretion afforded to Commerce by *Chevron*, 467 U.S. 837. *See* Def.'s Mem. at 21–34. Specifically, Commerce points out that: (1) Commerce properly relied on FOPs from a different surrogate source; (2) Commerce reasonably concluded that Indonesia could serve as a surrogate country for the purposes of import valuation of the merchandise at issue; (3) Commerce's decision to reject Indian import values was supported by substantial evidence; and (4) Commerce reasonably compared Indian import values to those of the United States. *See id.*

Peer Bearing and Shanghai General support Commerce's position and point out that: (1) Commerce may choose among available alternatives so long as the choice is reasonable and based on substantial record evidence; (2) Commerce reasonably considered the United States import statistics as a benchmark to determine the reliability of Indian import statistics; and (3) Commerce was justified in using Indonesian data for the first time in the *Final Results*. *See* Peer Bearing's Resp. Pl. Timken's Mot. J. Agency R. of Aug. 28, 1998 ("Peer Bearing's Resp. of Aug.

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[8] Timken notes that Commerce failed initially to place evidence on the record of import statistics for Indonesia, the United States, or the European Union, although Timken recognizes that these documents were publically available. *See* Timken Mem. at 9 n.2. On February 12, 1998, Commerce supplemented the record to include these documents but because: (1) Commerce is currently unable to present the documents about the European Union data to the Court; and (2) Commerce waives its reliance on that data, *see* Def.'s Mem. at 29 n.15, the Court shall not consider the European Union data as evidence of the propriety of Commerce's determination.

28") at 6–13; Shanghai General's Mem. P. & A. Opp'n Pl.'s Mot. J. Agency R. ("Shanghai General's Mem.") at 5–15.

C. Analysis

1. Commerce's Changes of Policy or Methodology

Agency statements provide guidance to regulated industries. While "'an agency does not act rationally when it chooses and implements one policy and decides to consider the merits of a potentially inconsistent policy in the very near future,'" *Transcom, Inc. v. United States*, 24 CIT ____, ____, 123 F. Supp. 2d 1372, 1381 (2000) (quoting *ITT World Communications, Inc. v. FCC*, 725 F.2d 732, 754 (D.C. Cir. 1984)), Commerce, in view of the rapidly-changing world of global trade and Commerce's limited resources, should be able to rely on its "unique expertise and policy-making prerogatives." *Southern Cal. Edison Co. v. United States*, 226 F.3d 1349, 1357 (Fed. Cir. 2000). "'The power of an administrative agency to administer a congressionally created * * * program necessarily requires the formulation of policy * * *.'" *Chevron* 467 U.S. at 843 (quoting *Morton v. Ruiz*, 415 U.S. 199, 231 (1974)).

An agency decision involving the meaning or reach of a statute that reconciles conflicting policies "'represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, [and a reviewing court] should not disturb [the agency decision] unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.'" *Id.* at 845 (quoting *United States v. Shimer*, 367 U.S. 374, 382–83 (1961)). Furthermore, an agency must be allowed to assess the wisdom of its policy on a continuing basis. Under the *Chevron* regime, agency discretion to reconsider policies is inalienable. *See id.* at 843. Any assumption that Congress intended to freeze an administrative interpretation of a statute would be entirely contrary to the concept of *Chevron* which assumes and approves the ability of administrative agencies to change their interpretations. *See, e.g., Maier, P.E. v. United States EPA*, 114 F.3d 1032, 1043 (10th Cir. 1997), *J.L. v. Social Sec. Admin.*, 971 F.2d 260, 265 (9th Cir. 1992), *Saco Defense Sys. Div., Maremont Corp. v. Weinberger*, 606 F. Supp. 446, 450–51 (D. Me. 1985). In sum, underlying agency interpretative policies "are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute." *Chevron*, 467 U.S. at 844.

Moreover, "'[a]n [agency] announcement stating a change in the method * * * is not a general statement of policy.'" *American Trucking Ass'ns, Inc. v. ICC*, 659 F.2d 452, 464 n.49 (5th Cir. 1981) (quoting *Brown Express, Inc. v. United States*, 607 F.2d 695, 701 (5th Cir. 1979) (internal quotations omitted)). While a policy "denotes * * * [the] general purpose [of the statute] considered as directed to the welfare or prosperity of the state," BLACK'S LAW DICTIONARY 1157 (6th ed. 1990), methodology refers only to the "performing [of] several operations[ ] in the most convenient order," *id.* at 991; *accord Avoyelles Sportsmen's League, Inc. v. Marsh*, 715 F.2d 897 (5th Cir. 1983); *Interstate Natural Gas Ass'n of Am.*

v. Federal Energy Regulatory Comm'n, 716 F.2d 1 (D.C. Cir. 1983); *Hooker Chems. & Plastics Co. v. Train*, 537 F.2d 620 (2d Cir. 1976). Consequently, courts are even less in the position to question an agency action if the action at issue is a choice of methodology, rather than policy. *See, e.g., Maier, P.E.*, 114 F.3d at 1043 (citing *Professional Drivers Council v. Bureau of Motor Carrier Safety*, 706 F.2d 1216, 1221 (D.C. Cir. 1983)). Similarly, an agency decision to change its methodology, that is, to take an act of statutory implementation while pursuing the same policy, should be examined under the *Chevron* test and sustained if the new methodology is reasonable. *See, e.g., Koyo Seiko Co v. United States*, 24 CIT ____, ____, 110 F. Supp. 2d 934, 942 (2000) (stating that "'the use of different methods [of] calculati[on] * * * does not [mean there is a] conflict with the statute,'" quoting *Torrington Co. v. United States*, 44 F.3d 1572, 1578 (Fed. Cir. 1995)). Therefore, Commerce's decision to reject its initial decision to rely on Indian data and Commerce's consequential use of Indonesian data was a justifiable change of methodology as long as such change in position was reasonably supported by the record.

2. Agency's Reconsideration of Its Determination After Issuance of Preliminary Results

An agency's reconsideration of its determination after issuance of preliminary results does not necessarily mean that the parties affected by the determination have been denied due process of law. A party subject to or affected by the review does not have a due process right to notice and comment on the agency's change in position if, throughout the agency's investigation, the party was reasonably on notice that the agency was considering the alternative ultimately used in the final determination. *See Tehnoimportexport v. United States*, 15 CIT 250, 255, 766 F. Supp. 1169, 1175 (1991) (holding that Commerce has no obligation to notify the parties beforehand that Commerce had chosen a surrogate country different from that designated in the initial determination); *accord Kerr-McGee Chem. Corp. v. United States*, 1999 U.S. App. LEXIS 2673 (Fed. Cir. Feb. 19, 1999).

> [An agency] is not required to afford interested parties an unlimited opportunity to comment on each modification of the agency's practice or procedure. To provide otherwise would be to unnecessarily burden the agency with an unending cycle of notices, comments, and responses.

British Steel PLC v. United States, 19 CIT 176, 255, 879 F. Supp. 1254, 1317 (1995).

While Timken notes that "Commerce [did not] vet [sic.] the idea of *using* Indonesian statistics during the comment period," Timken's Mem. at 6 (emphasis supplied), Timken does not dispute that Indonesia *was*

an alternative surrogate choice that Commerce *could consider*.[9] *See generally*, Timken's Mem. Therefore, Timken was on notice about Commerce's possible choices of data and Indonesian data in particular. Because the number of alternative surrogates is very small indeed, *see* 19 U.S.C. § 1677b(c)(4), had Timken felt that all or some of the alternative choices were improper, Timken could have disputed—and would not be overly burdened had Timken chosen to dispute—these alternatives. Timken's failure to exercise this right in a timely manner did not create an obligation on the part of Commerce to avail Timken to a second bite of the apple in the form of another "cycle of notices, comments, and responses." *British Steel PLC*, 19 CIT at 255, 879 F. Supp. at 1317.

3. Commerce's Decision to Use Indonesian Data

With respect to Timken's challenge to Commerce's decision to use Indonesian values, the Court finds that Timken is assailing not the reasoning but rather the result reached by Commerce, which is outside the Court's standard of review. *See Writing Instrument Mfrs. Ass'n, Pencil Section v. United States ("Writing Instrument")*, 21 CIT 1185, 1195, 984 F. Supp. 629, 639 (1997). During the review at issue, Commerce conducted research, determined to use import data from Indonesia, a producer of comparable merchandise, and explained that

> [while, as] with the Indian data, [Commerce was] unable to isolate the value of [the] steel [at issue] or identify an eight-digit category * * * containing such steel imported into Indonesia; however, unlike the Indian data, the Indonesian six-digit category 7228.30 closely approximates the value of [United States] imports of [the] steel [at issue], as well as the comparable six-digit category in the United States. Thus, [Commerce] determined that Indonesian category 7228.30, which is the narrowest category, * * * is the best available information * * *.

Final Results, 62 Fed. Reg. at 6196 (pointing out that "Indonesia has previously been used as a source of surrogate data in cases involving the PRC" and citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers From the People's Republic of China*, 60 Fed. Reg. 54,472, 54,475–76 (Oct. 24, 1995); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 Fed. Reg. 55,625, 55,629 (Nov. 8, 1994); *Helical Spring Lock Washers*, 58 Fed. Reg. at 48,835.

The Court is not in the position to declare such a conclusion unreasonable. *See Chevron*, 467 U.S. at 845.

Next, the Court rejects Timken's assertion that Commerce erred in using United States data as benchmarks to test the reliability of the Indian import data for valuing the merchandise at issue. A comparison of

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[9] The Court searched long and hard through the briefs and the exhibits provided by the parties for evidence verifying that Indonesia was indeed named during the review as one of the alternative surrogate choices, all to no avail. The Court, however, presumes that Commerce did name Indonesia as an alternative choice because: (1) no party contests such presumption; (2) all parties seem to operate under such presumption; and (3) 19 U.S.C. § 1677b(c)(4) allows Commerce to name a number of alternative surrogates.

surrogate data to that of market economy in order to determine the reliability of such surrogate data is within "'Commerce's statutory authority and consistent with past practice.'" *Peer Bearing Co. v. United States*, 22 CIT 472, 481, 12 F. Supp. 2d 445, 455 (1998) (quoting *Writing Instrument*, 21 CIT at 1195, 984 F. Supp. at 639 (upholding use of United States benchmark as a point of comparison for two possible surrogate values and quoting, in turn, *Olympia Indus., Inc. v. United States*, 21 CIT 364, 369 (1997) (approving Commerce's use of data from other market economies to test the reliability of surrogate country data))). Commerce, therefore, acted within its statutory authority by utilizing United States data to aid in its FOPs valuation. *See* 19 U.S.C. §§ 1677b(c)(1) and (4); *Peer Bearing*, 22 CIT at 481, 12 F. Supp. 2d at 455.

Finally, Commerce could reasonably find Indian data unreliable because Commerce has never adopted a numerical standard for identifying aberrational or questionable data and has properly exercised its statutory discretion by determining what information to use for valuing FOPs on a case-by-case basis. Indeed, during other reviews, Commerce has rejected as unsuitable surrogate data which varied from a benchmark to a much lesser extent than in this particular case. *See, e.g., Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania*, 57 Fed. Reg. 42,957, 42,958 (Sept. 17, 1992).

V. Commerce's Use of Unadjusted SKF India's Overhead, Selling, General and Administrative Expenses and Profit Rates

A. Background

Section 1677b(c)(1) of Title 19 requires Commerce to determine FMV of the subject merchandise on the basis of the value of the FOPs utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. *See* 19 U.S.C. § 1677b(c)(1). General expenses are the expenses that do not bear a direct relationship to the production of the merchandise at issue, such as SG&A expenses. The subsection also states that the valuation of FOPs "shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by [Commerce]." *Id.* Section 1677b(c)(4) provides that, in valuing FOPs under paragraph (1) of § 1677b(c), Commerce "shall utilize, to the extent possible, the prices or costs of [FOPs] in one or more market economy countries * * *." 19 U.S.C. § 1677b(c)(4).

Commerce has interpreted "the extent possible" language contained in 19 U.S.C. § 1677b(c)(4) as applicable to the calculation of the amount of general expenses and profit that is to be added to the FOPs referenced in paragraph (1) of § 1677b(c). *See* Def.'s Mem. at 38 (citing *Springfield Indus. Corp. v. United States*, 842 F.2d 1284, 1285 (Fed. Cir. 1988) (citing, in turn, *Chevron*, 467 U.S. at 843–44, 865–66)).

Applying this interpretation during the review at issue, Commerce concluded that an appropriate surrogate for determining general expenses and profit was SKF India, an Indian producer of merchandise similar to the merchandise at issue. Consequently, Commerce determined overhead, SG&A, and profit rates from the information contained in SKF India's financial report. *See* Def.'s Mem., Ex. 6 at 4–5; *Final Results*, 62 Fed. Reg. at 6193. Specifically, Commerce calculated the ratio of SKF India's overhead costs to its cost of manufacturing ("COM"), that is, the cost of materials plus labor, and then applied this ratio to the Indonesian and Indian raw material costs and direct labor costs. Commerce explained that,

> [i]n deriving these rates, [Commerce] used the SKF India data both with respect to the numerators (total overhead and SG&A expenses, respectively) and denominator (total cost of manufacturing). This methodology allowed [Commerce] to derive ratios of SKF India's overhead and SG&A expenses. These ratios, when multiplied by FOP[s] [Commerce] used in [Commerce's] analysis, thereby constitute the best available information concerning the overhead and SG&A expenses that would be incurred by a * * * producer given such FOP[s].

Final Results, 62 Fed. Reg. at 6193.

B. Contentions of the Parties

Timken argues that, if Commerce did not use the SKF India report to value all FOPs, Commerce should adjust overhead and SG&A rates to reflect the use of lower material and labor values from the separate sources; that it would be distortive to include SKF India's full materials and labor costs in the COM denominator unless SKF India's full materials and labor costs were also the basis for valuing the raw materials and direct labor factors in the constructed value calculation. *See* Timken's Mem. at 31–34 (relying on *Sigma Corp. v. United States ("Sigma")*, 117 F.3d 1401 (Fed. Cir. 1997); *Timken Co. v. United States ("Timken 1988")*, 12 CIT 955, 699 F. Supp. 300 (1988), *aff'd*, 894 F.2d 385 (Fed. Cir. 1990)). Timken proposed that: (1) Commerce multiply SKF India's total weight of materials by the average value of steel; and (2) the total number of hours worked at SKF India by the labor value used for material and labor figures that Commerce included in the overhead and SG&A calculations. *See id.*

Commerce maintains that the methodology used allowed Commerce to derive internally consistent ratios of SKF India's overhead and SG&A expenses. *See* Def.'s Mem. at 40–41; *see also Final Results*, 62 Fed. Reg. at 6193. Commerce contends that doing otherwise, that is, adjusting the underlying values of SKF India, would create a result no longer representative of SKF India's costs. *See* Def.'s Mem. at 40–41. Specifically, Commerce pointed out that

> [Timken's] recommended adjustment would affect (reduce) the denominator, but it would leave the overhead and SG&A expenses in the numerator unchanged. As such, [Commerce] find[s] that this

> adjustment would itself distort the resulting ratio, rather than cur[e] the alleged distortion in [Commerce's] calculations.

Final Results, 62 Fed. Reg. at 6193.

Peer Bearing supports Commerce's conclusion and states that "Timken's assertion that the application of the overhead/SG&A/profit ratios (derived from SKF India) to the material and labor costs (derived from other sources) 'mixes apples and oranges' and is incorrect." Peer Bearing's Resp. Pl. Timken's Mot. J. Agency R. of Feb. 18, 1998 ("Peer Bearing's Resp. of Feb. 18") at 16. Peer Bearing maintains that Commerce's application of ratios for overhead, SG&A and profit derived from one source to COM values derived from another one is consistent with Commerce's practice in other NME cases. *See id.* at 15–16 (citing *Preliminary Determination of Sales at Less Than Fair Value: Coumarin From the People's Republic of China ("Coumarin")*, 59 Fed. Reg. 39,727, 39,729 (Aug. 4, 1994); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the Republic of Romania*, 61 Fed. Reg. 51,472 (Oct. 2, 1996) [sic]).[10]

C. Analysis

"In the absence of a statutory mandate to the contrary, Commerce's actions must be upheld as long as they are reasonable." *Timken Co. v. United States*, 23 CIT ____, ____, 59 F. Supp. 2d 1371, 1377 (1999); *see also Chevron*, 467 U.S. at 844–45. Specifically, Commerce's authority to select appropriate surrogate data includes the authority to base a calculation on these data without adjustment, if such method is reasonable. *See id.; see also Peer Bearing*, 22 CIT at 481–82, 12 F. Supp. 2d at 456.

The Court is not convinced by Timken's reference to *Sigma*, 117 F.3d 1401 and *Timken 1988*, 12 CIT 955, 699 F. Supp. 300. *Sigma* stands for the proposition that Commerce shall support its determination by substantial evidence if Commerce claims comparability between the entity under investigation and that used as a surrogate. *See* 117 F.3d at 1409–10. *Timken 1988*, in turn, stands for the proposition that in order to value one *type of raw material* that is greatly disproportionate in value to the other *type of raw material*, Commerce must have reasonable justification supported by substantial evidence on the record. *See* 12 CIT 955, 699 F. Supp. 300.

In the case at bar, Commerce derived overhead, SG&A, and profit rates from SKF India's financial report; thus, SKF India's *rates* are supported by substantial evidence on the record. Commerce also explained that the adjustment suggested by Timken would distort the experience of SKF India rather than cure any distortion in Commerce's calculation. *See Final Results*, 62 Fed. Reg. at 6193. Moreover, the record does con-

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[10] The Court assumes Peer Bearing intended to cite *Coumarin*, 59 Fed. Reg. at 39,730, and *Final Results and Rescission in Part of Antidumping Duty Administrative Review of Tampered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania*, 61 Fed. Reg. 51,427 (Oct. 2, 1996). The "consistent practice" argument fostered by Peer Bearing leaves this Court unconvinced. While an agency practice is a consideration with regard to the issue of agency execution of its responsibilities, a wrongful agency practice cannot be justified simply on the grounds that such practice is "continuous."

tain sufficient information regarding the surrogate, that is, SKF India, for purposes of the overhead, SG&A and profit calculations.[11]

Although the Court could certainly question the perfection of Commerce's approach, the Court holds that, under the circumstances, Commerce acted reasonably in not subtracting import duties from SKF India's data. Commerce attempted to capture in its *rate* calculation the surrogate company's experience in incurring overhead and SG&A expenses, and created a reasonable internally consistent *ratio* that, as imperfect as it might be, does not violate the boundaries set by 19 U.S.C. § 1677b(c). While the Court agrees with Timken's contention that a *factor* chosen by Commerce should be fixed to a particular figure within parameters of a single determination, it does not follow that the *ratio* applied by Commerce to the factors under consideration should necessarily be derived from the fixed factors. The mere fact that one of the actual factors is likely to be higher while the other one is likely to be lower than the corresponding data derived from the records of SKF India does not empower the Court to uphold Timken's suggestion as a more palatable alternative. *See American Spring Wire*, 8 CIT at 22, 590 F. Supp. at 1276 (stating that "[t]he court may not substitute its judgment for that of the [agency] when the choice is 'between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*'" and quoting *Penntech Papers*, 706 F.2d at 22–23 (quoting, in turn, *Universal Camera*, 340 U.S. at 487–88)).

VI. Commerce's Use of Labor Data From Investing, Licensing & Trading Conditions Abroad, India

A. Background

In determining direct labor costs, Commerce, instead of using SKF India's labor costs, used public source data from Investing, Licensing & Trading Conditions Abroad, India ("ILT"), released by the Economist Intelligence Unit in November 1993. *See Preliminary Results*, 60 Fed. Reg. at 49,575. Commerce explained that

> [Commerce] prefer[s] published surrogate import data to the SKF [India's] data in valuing the material FOP for the following reasons. First, [Commerce is] able to obtain data specific to the [period of review], which more closely reflect the costs to producers during the [period of review]. Second, the raw material costs from the SKF [India's] report do not specify the types of steel purchased by SKF [India]. The record does not indicate whether SKF purchased bar steel (the type used by the Chinese manufacturers) or more expensive tube steel to produce bearings parts. Third, although [Commerce] agree[s] with [Timken's] point that SKF [India's] is a

[11] Timken argues that Commerce could have exactly calculated the customs duties and import charges incurred by SKF India merely because the record shows the total material cost, the percent imported, and the cost of insurance and freight of SKF India's imports. *See* Timken Mem. at 33–34. It does not follow from this list, however, that Commerce knows how much of these import costs are attributable to import duties.

> producer of subject merchandise, the report also identifies other products it manufactures.

Final Results, 62 Fed. Reg. at 6193.

B. Contentions of the Parties

Commerce asserts that it does not focus upon a particular surrogate producer of subject merchandise if more objective, industry-wide values (such as ILT rates) are available because: (a) the surrogate producer is not the subject of the valuation; (b) Commerce's goal is to use surrogate values that represent the industry norm of the surrogate country, not company-specific surrogate values; and (c) Commerce prefers to value factors using public information that is most closely concurrent to the specific period of review ("POR"). *See* Def.'s Mem. at 7, 44.

Peer Bearing supports Commerce, stating that Commerce was not required to use SKF India's labor costs, and points out that Commerce could use diverse surrogate sources. *See* Peer Bearing's Resp. of Feb. 18 at 17.

Timken argues that if the use of SKF India's unadjusted overhead, SG&A and profit rates were reasonable, then Commerce should be required to use SKF India's labor costs. *See* Timken Mem. at 36.

C. Analysis

The applicable provisions state that

> the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries * * *
>
> * * * * * * *
>
> * * * unitiz[ing], to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.

19 U.S.C. §§ 1677b(c)(1) and (4).

Although the provisions specifically refer to "costs * * * in one or more market economy *countries*" rather than private *entities*, *id.* (emphasis supplied), the reasonableness of using a particular value must be determined on a case-by-case basis. *See, e.g.*, *Ceramica Regiomontana, S.A. v. United States*, 10 CIT 399, 406, 636 F. Supp. 961, 967 (1986).

In the case at bar, SKF India's labor expenses were an element included in the denominator of Commerce's calculation of the ratio for overhead, SG&A and profits. Commerce, therefore, effectively made an election for the particular factor of production and supported such election with a sufficient record and reasoning.[12]

This Court holds that, within parameters of each administrative determination, Commerce is bound to each election Commerce makes.

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[12] Indeed, Commerce maintains that Commerce's methodology allowed Commerce to derive an internally consistent ratio. *See* Def.'s Mem. at 40–41; *see also Final Results*, 62 Fed. Reg. at 6193.

While Commerce is entitled to use different surrogate *sources* in making an election, *see Timken*, 2001 Ct. Intl. Trade LEXIS 100 at *30–38, Slip Op. 01–96 at 24–30, it would be anomalous to suggest that the statutory format creates a mode allowing Commerce to use different figures as a substitute for the very same *factor*. *Cf. SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) (pointing out that "Commerce cannot give the term * * * a different definition * * * in the same proceeding"). Under the mandate of *Chevron*, 467 U.S. at 844–45, which requires courts to give substantial deference to a reasonable agency determination, such mode would leave the members of the regulated industry at the whim of their regulatory agency, thereby condoning a possible abuse of the agency regulatory power.

In sum, Commerce's decision to use ILT data rather than SKF India's data in determining labor costs was unreasonable in view of Commerce's use of SKF India's data for the calculation of the overhead, SG&A and profit rates. Therefore, this issue is remanded to Commerce to redetermine direct labor costs on the basis of SKF India's data on labor (supplemented by facts otherwise available only to the extent necessitated by the insufficiency, if any, of SKF India's data currently on the record).

VII. Commerce's Adjustment

A. Background

Section 1677a(e) of Title 19 provides for deduction from ESP of "expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise * * *." 19 U.S.C. § 1677a(e) (1988). When an adjustment is granted to ESP, Commerce's regulation, 19 C.F.R. § 353.56 (1994), permits an ESP offset to FMV up to the amount of indirect selling expenses incurred in the United States. *See Torrington Co. v. United States*, 82 F.3d 1039, 1048–49 (Fed. Cir. 1996) (stating that Commerce may adjust FMV pursuant to the ESP offset by the amount of indirect selling expenses incurred in making foreign sales).

During the review at issue, Timken contended that Commerce should subtract only the portion of SG&A that is attributable to indirect selling expenses. Commerce agreed with Timken and stated that, "in conformity with section 353.56 * * *, [Commerce makes the ESP offset to FMV] in an amount not * * * exceed[ing] indirect selling expenses incurred in the United States." *Final Results*, 62 Fed. Reg. at 6203. Commerce based this offset on the "other expenses" item from the SKF India's report, and "subtracted from [that] item the amount for debentures as indicated in a footnote to 'other expenses'" in the SKF India's report. *Id.* Commerce pointed out that

> [t]he SKF [India's] report notes that the general category of expenses containing the "other expenses" item includes "selling expenses." However, none of the [specifically] named items *(e.g.*, "power and fuel") pertain to selling expenses. [Commerce has] con-

> cluded that, as suggested by [Timken], the "other expenses" item, minus debentures, represents these "selling expenses."

Id.

B. Contentions of the Parties

Timken asserts that Commerce's explanation about the "other expenses" in SKF India's report "admits" that the ESP offset was not limited to selling expenses but includes such non-selling expenses as power and fuel. *See* Timken's Mem. at 39–40. Accordingly, Timken argues that Commerce should either make no ESP offset adjustment to FMV at all or make a reasonable estimate of what portion would be indirect selling expenses. *See id.* at 43. Timken contends that because the "ESP offset" process is derived from the language of a regulation rather than a statute, "it would in no way fall short of any statutory mandate for [Commerce] to decline to make the offset, rather than making it on the basis of overly-broad data. Moreover, not making the offset would be consistent with the rule that remedial statutes are to be liberally construed to effectuate their purpose of protecting [United States] industry." *Id.* at 42.

Commerce maintains that it "did not admit in the *Final Results*, 62 Fed. Reg. [at 6203,] that [Commerce] included in the ESP offset non-selling expenses." Def.'s Mem. at 46. Commerce explains that, after extracting from SKF India's report individual line items representing non-selling expenses, such as power and fuel, Commerce concluded that the "other expense" category contained, in general, only selling expenses and, in particular, only indirect selling expenses for which the ESP offset adjustment was appropriate. *See id.* (citing *Final Results*, 62 Fed. Reg. at 6203, Comment 14).

Peer Bearing supports Commerce's position and asserts that "Timken misunderstands the breakout of expenses" in the SKF India's report. Peer Bearing's Resp. of Feb. 18 at 18.

C. Analysis

The relevant expense category in the SKF India's report is headed "Manufacturing and Other Expenses Profit & Loss Account" and includes the following items: (a) "Stores and spares consumed"; (b) "Power and fuel"; (c) "Repairs to buildings"; (d) "Repairs to Machinery"; (e) "Insurance"; (f) "Rates and taxes"; (g) "Rent"; (h) "Director's commission"; (i) "Royalty"; (j) "Other expenses"; and (k) "Profit (less loss) on fixed assets sold, scrapped." Def.'s Mem., Ex. 8. The item "Manufacturing and other expenses," in turn, includes the following four designations: (1) "Contribution to provident and other funds * * *; (2) "Included in stores and spares consumed is the debit in respect of tools"; (3) "Auditors' remuneration"; and (4) "Debenture issue expenses." *Id.*, Ex. 9.

While Timken reads the selling expenses figure to include "an undefined array of 'other expenses' as well," Timken Mem. at 40, the Court believes that Timken is either: (1) misreading the evidence; or (2) assail-

ing the very conclusion reached by Commerce rather than Commerce's mode of reasoning. However, the result reached by Commerce, unlike the logistics of Commerce's determination, is outside the Court's standard of review. *See Writing Instrument*, 21 CIT at 1195, 984 F. Supp. at 639.

The Court finds Commerce's reading and application of the evidence reasonable because: (1) none of the other items in the category "Manufacturing and Other Expenses Profit & Loss Account" pertain to selling expenses and, thus, it was reasonable for Commerce to conclude that selling expenses were captured in the "other expenses" item; and (2) the list of "other expenses" includes only one designation not pertaining to selling expenses, namely, "Debenture issue expenses" and, thus, it was reasonable for Commerce to conclude that, "after the deduction of debenture issue expenses, the remaining '[o]ther expenses' contain [the best available list of] selling expenses." Def.'s Mem. at 47.

Timken's suggestion that Commerce, in dealing with imperfect evidence, should simply decline to make any use of such evidence and refuse the ESP offset adjustment because "remedial statutes are to be liberally construed to effectuate their purpose of protecting [United States] industry," Timken's Mem. at 42, is equally unpersuasive. The whole body of the antidumping duty law is largely remedial in nature, *see Badger-Powhatan, a Div. of Figgie Int'l, Inc. v. United States*, 9 CIT 213, 608 F. Supp. 653 (1985), *appeal dismissed*, 808 F.2d 823 (Fed. Cir. 1986), but it does not follow that the application of antidumping provisions should, instead of leveling the playing field, give an unfair advantage to the domestic industry each time Commerce is forced to deal with less than perfect evidentiary data.[13] Indeed, such requirement would run against the gist of the whole body of the antidumping duty law because its implementation could paralyze nearly all Commerce's regulatory and investigatory activity.

VIII. Commerce's Calculation of Marine Insurance

In its final determination, Commerce calculated marine insurance using a publicly available rate for sulphur dyes and multiplying this rate by the packed weight of the merchandise at issue, specifically, bearings. *See Final Results*, 62 Fed. Reg. at 6204. As this Court pointed out in *Timken*, 2001 Ct. Intl. Trade LEXIS 100 at *60–61, Slip Op. 01–96 at 50–51, Commerce's reliance on a weight-based methodology was flawed.

Insurers agreeing to pay the value of merchandise lost or destroyed in transit base their premium rates on what it would cost to replace the merchandise or compensate the losses rather than upon the weight of the merchandise being shipped. *See Peer Bearing*, 22 CIT at 486, 12 F. Supp. 2d at 458–59 ("Insurance by definition is based upon pecuniary valuation, not on the weight of the product to be insured"). The Court,

[13] In the case at bar, such requirement would create an outcome contrary to the very gist of 19 C.F.R. § 353.56, forcing Commerce to refuse certain respondents the ESP offsets while granting the ESP deductions to the corresponding United States prices.

therefore, remands this issue to Commerce to determine marine insurance in a manner related to the value and the risk of transporting tapered roller bearings.

IX. Commerce's Use of Shanghai General's Market Economy Import Data

A. Background

During the review period, Shanghai General imported a significant part of its steel input from market economy countries, purchasing such steel directly from a market economy supplier and paying with market economy currency. *See Final Results*, 62 Fed. Reg. at 6198–99. In view of the significant portion of steel input purchased under market economy conditions, Commerce used Shanghai General's data concerning such imports, rather than surrogate data, to value Shanghai General's raw materials FOP. *See id.*

B. Contentions of the Parties

Timken contends that Shanghai General's margin in this review was erroneously calculated. Timken argues that since a portion of the FOP valued was obtained from domestic NME sources, Commerce should have averaged the prices Shanghai General actually paid in free market transactions with surrogate values used in substitute for the domestic NME sources. *See* Timken's Mem. at 48–52. Timken urges that Commerce revert to the methodology applied in the *Preliminary Results* by valuing: (1) Shanghai General's imports at their actual purchase price; and (2) steel purchased from the PRC at the assigned surrogate rate. *See* 60 Fed. Reg. at 49,574.

Commerce maintains that Commerce's actions were in accordance with law, as interpreted and applied in *Lasko Metal Prods., Inc. v. United States*, 16 CIT 1079, 810 F. Supp. 314 (1992), and *Tianjin*, 16 CIT 931, 806 F. Supp. 1008. *See* Def.'s Mem. at 49–50. Shanghai General supports Commerce's assertion and points out that Commerce's actions were in accordance with law and with Commerce's established practice of using actual prices instead of surrogate values when an NME producer has purchased certain inputs from market-economy suppliers and paid for them in a market-economy currency. *See* Shanghai General's Mem. P. & A. Opp'n Pl.'s Mot. J. Agency R. ("Shanghai General's Mem.") at 29–30.

C. Analysis

The applicable statute provides that, when dealing with imports from an NME country such as the PRC, Commerce shall determine the FMV of the subject merchandise based on FOPs utilized in producing the merchandise. *See* 19 U.S.C. § 1677b(c)(1). The statute further provides that Commerce shall value the reported FOPs based on the BIA regarding the values of FOPs in an appropriate market economy. *See id.; see also Union Camp Corp. v. United States*, 20 CIT 931, 933–34, 941 F.Supp. 108, 111–12 (1996). While conducting NME investigations, Commerce "shall utilize, to the extent possible, the prices or costs of [FOPs] in one or more market economy countries that are[:] (A) at a lev-

el of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." *See* 19 U.S.C. § 1677b(c)(4).

Commerce's "task in [an NME] investigation is to calculate what [the] costs or prices would be [in the NME] if such prices or costs were determined by market forces." *Tianjin*, 16 CIT at 940, 806 F. Supp. at 1018. Therefore, Commerce estimates the FMV by doing the following: (1) isolating each FOP process in the NME; (2) choosing a surrogate market economy country at a comparable level of economic development that produces comparable merchandise; (3) assigning a value to each FOP equal to its cost in the surrogate country; and (4) adding to those values an estimated amount for profit and general expenses. *See Nation Ford Chem. Co. v. United States*, 21 CIT 1371, 985 F. Supp. 133 (1997).

In applying the FOP methodology to an NME, if Commerce finds that such actual costs represent the BIA, Commerce has the discretion to take a combined approach and to consider actual costs paid by the NME producer for each FOP. *See Lasko Metal Prods.*, 43 F.3d at 1445–46; *Magnesium Corp. of Am. v. United States*, 20 CIT 1092, 1098, 938 F. Supp. 885, 892 (1996). The statute does not specify what constitutes BIA, nor does it prescribe a specific method for valuing FOP when a portion of the factor to be valued represents a source in the NME itself and a portion of the same FOP represents a source obtained from a market-economy supplier and paid for in market economy currency.

"Where an input was sourced from a market economy and paid for in market economy currency, [Commerce] use[s] the actual price paid for the input to calculate [FMV] in accordance with [Commerce's] practice." *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 Fed. Reg. 61964, 61966 (Nov. 20, 1997) (citing *Lasko Metal Prods.*, 43[ ] F.3d at 144[6], and outlining Commerce's practice at the time of the review at issue); *see Final Determination of Sales at Less Than Fair Value: Coumarin From the People's Republic of China*, 59 Fed. Reg. 66,895, 66,897 (Dec. 28, 1994); *accord Preliminary Results of Antidumping Duty Administrative Review of Porcelain-on-Steel Cooking Ware From the People's Republic of China*, 63 Fed. Reg. 1434, 1436 (Jan. 9, 1998); *Final Results of Antidumping Duty Administrative Review of Industrial Nitrocellulose From the People's Republic of China*, 62 Fed. Reg. 65,667, 65,670 (Dec. 15, 1997); *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 Fed. Reg. 9160, 9163 (Feb. 28, 1997); *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 Fed. Reg. 19,026, 19,029 (April 30, 1996).

In the case at bar, although a part of the FOP was purchased domestically in the NME, Commerce utilized actual prices paid in market econo-

my currencies to market economy suppliers to value the entire FOP. Commerce reasons that,

> [b]ecause the statute does not explicitly address the situation in which an NME producer imports some inputs from market economies * * *, [Commerce] has determined that if an NME producer reports prices that are based on inputs from market-economy suppliers, it is appropriate to use those prices instead of a surrogate value, if the amounts purchased are meaningful, *i.e.*, they are not insignificant. [Commerce] has applied this practice consistently in recent years * * *.[14]

Final Results of Antidumping Duty Administrative Review of Certain Helical Spring Lock Washers From the People's Republic of China, 62 Fed. Reg. 61,794, 61,796 (Nov. 19, 1997).

Thus, Commerce, if the proportion of the market economy purchases are "meaningful" or "significant," values the entire FOP using the price paid in the market economy. The record supports Commerce's conclusion that Shanghai General's market purchases were "meaningful" and "significant." *See Final Results* 62 Fed. Reg. at 6191.

Similarly, the statute does not require Commerce to resort to a weighted average methodology when valuing FOPs where: (1) only a portion of the FOP to be valued is sourced by the NME producer domestically; and (2) another portion is purchased by the NME producer in an arm's-length transaction from market economy sources and paid for in market economy currency. *See Nation Ford Chem.*, 21 CIT at 1376, 985 F. Supp. at 137 (holding that nothing in the statute prohibits Commerce from valuing the FOP as it did because Commerce does not have to duplicate the exact production experience of an NME manufacturer at the expense of choosing a surrogate that most accurately represents the FMV of the surrogate in the hypothetically created "market-economy" version of the NME).

While the Court agrees with Timken's contention that there could indeed be better information, such as statistics from India, Indonesia or the United States, upon which Commerce could have based its determination, the issue is whether Commerce reasonably exercised its dis-

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[14] Commerce's practice has been codified in *Final Rule on Antidumping Duties; Countervailing Duties ("Final Rule")*, 62 Fed. Reg. 27,296 (May 19, 1997). The *Final Rule* provides that:

> [Commerce] normally will use publicly available information to value factors. However, where a factor is purchased from a market economy supplier and paid for in a market economy currency, [Commerce] normally will use the price paid to the market economy supplier. In those instances where a portion of the factor is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, [Commerce] normally will value the factor using the price paid to the market economy supplier.

Calculation of normal value of merchandise from nonmarket economy countries, 62 Fed. Reg. at 27,413, § 351.408(c)(1).

Although the *Final Rule* was issued three months after the *Final Results* at issue, Commerce applied the aforesaid methodology prior to the release of the *Final Rule*. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From the People's Republic of China*, 62 Fed. Reg. 25,899, 25,902 (May 12, 1997) ("For those inputs * * * that were sourced (either partially or totally) from a market economy and paid for in market economy currency, [Commerce] use[s] the actual price paid for the input to calculate the factors-based NV in accordance with our practice." Moreover, the *Final Rule* differs insignificantly from *Notice of proposed rulemaking and request for Public Comments on Antidumping Duties; Countervailing Duties ("Proposed Rule")*, 61 Fed. Reg. 7308, *Calculation of normal value if sales are made at less than cost of production*, 61 Fed. Reg. 7383, 7384, § 351.406(c)(1) (Feb. 27, 1996), published almost a year before the issuance of the *Final Results* at issue. In promulgating the *Proposed Rule* and *Final Rule*, Commerce explained that one of the objectives of the issuance of these Rules was to articulate Commerce's ongoing practice. *See Final Rule*, 62 Fed. Reg. at 27,413; *Proposed Rule*, 61 Fed. Reg. at 7384.

cretion in choosing actual prices paid in lieu of a weighted average of actual prices paid and surrogate prices. The Court's "duty is not to weigh the wisdom of, or to resolve any struggle between, competing views of the public interest, but rather to respect legitimate policy choices made by the agency in interpreting and applying the statute." *Suramerica de Aleaciones Laminadas, C.A. v. United States*, 966 F.2d 660, 665 (Fed. Cir. 1992).

Next, the antidumping law provides that Commerce may revoke antidumping duty orders under appropriate circumstances. *See* 19 U.S.C. § 1675(c) (1988). "[T]he statute le[aves] much to Commerce's discretion regarding the revocation of orders." *Kemira Fibres OY v. United States*, 61 F.3d 866, 873 (Fed. Cir. 1995), *see Timken Co. v. United States*, 21 CIT 1313, 1325, 989 F. Supp. 234, 244 (1997) ("[T]he statute grants Commerce wide discretion in making such a determination * * *.") Commerce's authority to revoke antidumping duty orders, either entirely or in part, is reflected in 19 C.F.R § 353.25 (1994). The regulation provides three requirements for Commerce to exercise its authority to revoke an order: (1) "One or more producers or resellers covered by the order have sold the merchandise at not less than foreign market value for a period of at least three consecutive years"; (2) "It is not likely that those persons will in the future sell the [subject] merchandise at less than foreign market value"; and (3) "[P]roducers or resellers that * * * previously * * * have sold the [subject] merchandise at less than foreign market value, * * * agree in writing to their immediate reinstatement in the order, * * * if [Commerce] concludes * * * that * * *, subsequent to the revocation, [these parties] sold the [subject] merchandise at less than foreign market value." 19 C.F.R § 353.25.

In the case at bar, Shanghai General appropriately requested partial revocation pursuant to 19 C.F.R § 353.25(b), and Commerce, after examining evidence on the record, found each of the three requirements of the regulation satisfied. *See Final Results*, 62 Fed. Reg. at 6213–14. Considering that there is a satisfactory record compiled by Commerce, it is not the position of the Court to question anything but the reasonableness of Commerce's argument. *See Christensen*, 529 U.S. at 588; *Southern Cal. Edison*, 226 F.3d at 1356 (quoting *Martin v. Occupational Safety and Health Review Comm'n*, 499 U.S. 144, 151 (1991)).

Based on the foregoing, the Court concludes that Commerce acted reasonably in: (1) refusing to resort to a weighted average methodology; (2) utilizing actual prices paid in market economy currencies to market economy suppliers to value the entire FOP; and (3) granting Shanghai General partial revocation of the applicable antidumping duty order.

CONCLUSION

The case is remanded to Commerce to: (1) correct the clerical error resulting from the application of BIA to certain models for which FOPs were available; (2) redetermine direct labor costs on the basis of SKF India's data on labor (supplemented by facts otherwise available only to the extent necessitated by the insufficiency, if any, of SKF India's data

currently on the record); and (3) determine marine insurance in a manner related to the value and the risk of transporting tapered roller bearings. Commerce's final determination is affirmed in all other respects.

(Slip-Op. 01–126)

SHANDONG HUARONG GENERAL CORP., LIAONING MACHINERY IMPORT & EXPORT CO., AND TIANJIN MACHINERY IMPORT & EXPORT CORP., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND O. AMES CO., DEFENDANT-INTERVENOR

Consolidated Court No. 00–08–00393

(Dated November 1, 2001)

FINAL JUDGMENT

CARMAN, *Chief Judge:* THIS MATTER, having come before the Court on plaintiffs' motion for judgment on the agency record challenging the final and amended final results of the United States Department of Commerce's (Commerce) eighth administrative review of antidumping duty orders covering certain heavy forged hand tools from the People's Republic of China; and the Court in Slip Op. 01–88 having issued an Opinion granting in part and denying in part plaintiffs' motion, and remanding the matter to Commerce to reconsider its selection of pallet surrogate value and to recalculate plaintiffs' dumping margins accordingly; and Commerce having filed its Final Results of Redetermination Pursuant to Court Remand (Remand Results) with the Court in accordance with Slip Op. 01–88; and the parties having no objection to the Court's sustaining the Remand Results; and upon all other papers and proceedings had herein; and upon due

ORDERED, ADJUDGED, AND DECREED, that Commerce's Remand Results be, and hereby are, sustained; and it is further

ORDERED, that this case be, and hereby is, dismissed.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C01/110 9/5/01 Carman, C.J.	Ero Industries, Inc.	98–7–02605, 98–9–02912	3926.90.98 5.3% 3924.90.55 3.4%	9503.90.00 Free of duty	Ero Industries, Inc. *v.* United States, Slip Op. 00–138 (2000)	Atlanta Playtents, playhouses, slumber tents and vehicle tents
C01/111 9/5/01 Watson, J.	Ero Industries, Inc.	98–12–03193, 99–2–00072	3924.90.55 3.4%	9503.90.00 Free of duty	Ero Industries, Inc. *v.* United States, Slip Op. 00–138 (2000)	Atlanta Playtents, playhouses, slumber tents and vehicle tents
C01/112 9/19/01 Pogue, J.	3G Mermet Fabric Corp.	98–4–00669–S	7019.59.40 or 7019.59.90 8% or 9.9%	3926.90.98 5.3%	3G Mermet Fabric *v.* United States, S.O. 01–28 and S.O. 01–78 (2001)	Cincinnati Window shade fabrics
C01/113 10/10/01 Aquilino, J.	USR Optonix, Inc.	96–3–00880	3206.50.00 Not stated	3823.90.39 Free of duty	Agreed statement of facts	Newark Various types of zinc sulfides
C01/114 10/17/01 Wallach, J.	H.C. Starck, Inc.	99–11–00699	8103.10.60 2.7%	8103.10.30 Free of duty	Agreed statement of facts	Boston Tantalum Scrap Grade #1 Grey Anodes
C01/115 10/23/01 Carman, C.J.	Ero Industries, Inc.	00–07–00311	3924.90.55 3.4%	9503.90.00 Free of duty	Ero Indus., Inc. *v.* United States, Slip Op. 00–138 (2000)	Atlanta Playtents, playhouses, slumber tents, etc.
C01/116 10/23/01 Carman, C.J.	Harley-Davidson Motor Co.	00–09–00469	6202.93.50 28.6% (for jackets) 6204.63.35 29.5% (for pants)	6210.40.50 7.4% (for jackets and pants)	Agreed statement of facts	Chicago Men's rain suit jackets and men's rain suit pants
C01/117 10/23/01 Pogue, J.	A & A Int'l	99–4–00194	8517.11.0000 2.4%	A8517.11.0000 Free of duty	Agreed statement of facts	Los Angeles, San Francisco, Dallas/ Ft. Worth Cordless phones or telephones

C01/118 10/23/01 Pogue, J.	Cytec Indus. Inc.	99–5–00295	2914.50.30 9.4% or 3813.00.5000 3.7%	K2914.50.30 Free of duty pursuant to General Note 13 to the HTSUS	Agreed statement of facts	Baltimore Dioxybenzone (2,2-Dihydroxy-4-methoxybenzophenone)
C01/119 10/29/01 Carman, C.J.	Xerox Corp.	97–2–00203	3707.90.30 8.5%	9009.90.50/70 Free of duty or 3.9% 8473.30.30/40/50 Free of duty 8517.90.08 4.7% or 3.5%	Agreed statement of facts	Buffalo, Los Angeles Parts and accessories of electrostatic photocopiers and laser printers
C01/120 10/29/01 Carman, C.J.	Xerox Corp.	97–2–00356	3707.90.30 8.5%	9009.90.50/70 Free of duty or 3.9% 8473.30.30/40/50 Free of duty 8517.90.08 4.7% or 3.5%	Agreed statement of facts	Buffalo, Los Angeles Parts and accessories of electrostatic photocopiers and laser printers
C01/121 10/29/01 Carman, C.J.	Xerox Corp.	97–4–00575	3707.90.30 8.5%	9009.90.50/70 Free of duty or 3.9% 8473.30.30/40/50 Free of duty 8517.90.08 4.7% or 3.5%	Agreed statement of facts	Buffalo, Los Angeles Parts and accessories of electrostatic photocopiers and laser printers
C01/122 10/29/01 Carman, C.J.	Xerox Corp.	97–4–00693	3707.90.30 8.5%	9009.90.50/70 Free of duty or 3.9% 8473.30.30/40/50 Free of duty 8517.90.08 4.7% or 3.5%	Agreed statement of facts	Buffalo, Champlain, Detroit, New York Parts and accessories of electrostatic photocopiers and laser printers

ABSTRACTED CLASSIFICATION DECISIONS—*Continued*

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C01/123 10/29/01 Carman, C.J.	Xerox Corp.	97–5–00915	3707.90.30 8.5%	9009.90.50/70 Free of duty or 3.9% 8473.30.30/40/50 Free of duty 8517.90.08 4.7% or 3.5%	Agreed statement of facts	Buffalo, Los Angeles, New York Parts and accessories of electrostatic photocopiers and laser printers
C01/124 10/29/01 Carman, C.J.	Xerox Corp.	97–6–00981	3707.90.30 8.5%	9009.90.50/70 Free of duty or 3.9% 8473.30.30/40/50 Free of duty 8517.90.08 4.7% or 3.5%	Agreed statement of facts	Buffalo, Los Angeles Parts and accessories of electrostatic photocopiers and laser printers
C01/125 10/29/01 Carman, C.J.	Xerox Corp.	97–8–01320	3707.90.30 8.5%	9009.90.50/70 Free of duty or 3.9% 8473.30.30/40/50 Free of duty 8517.90.08 4.7% or 3.5%	Agreed statement of facts	Buffalo, Los Angeles, New York Parts and accessories of electrostatic photocopiers and laser printers
C01/126 10/29/01 Carman, C.J.	Xerox Corp.	97–9–01519	3707.90.30 8.5%	9009.90.50/70 Free of duty or 3.9% 8473.30.30/40/50 Free of duty 8517.90.08 4.7% or 3.5%	Agreed statement of facts	Buffalo, Champlain Parts and accessories of electrostatic photocopiers and laser printers
C01/127 10/29/01 Carman, C.J.	Xerox Corp.	99–1–00023	3707.90.30 8.5%	9009.90.50/70 Free of duty or 3.9% 8473.30.30/40/50 Free of duty 8517.90.08 4.7% or 3.5%	Agreed statement of facts	Los Angeles Parts and accessories of electrostatic photocopiers and laser printers

C01/128 11/1/01 Goldberg, J.	Libas, Ltd.	95–7–00868	5208.41.6000 or 5208.42.40 11.4%	5208.41.20 or 5208.42.10 6%	Agreed statement of facts	Los Angeles Hand-loomed cotton fabric
C01/129 11/1/01 Goldberg, J.	Xerox Corp.	94–7–00429–S	3707.90.30 8.5%	9009.90.50/70 Free of duty or 3.9% 8473.30.30/40/50 Free of duty 8517.90.08 4.7% or 3.5%	Agreed statement of facts	Buffalo Parts and accessories of electrostatic photocopiers and laser printers
C01/130 11/2/01 Carman, C.J.	Concentric, Inc.	01–00068	8413.30.90 2.5%	8413.60.00 Free of duty	Agreed statement of facts	Chicago Rotary positive displacement pumps

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